

REMARKS

Applicant has amended the application to correct various informalities and to place the application, as a whole, into *prima facie* condition for allowance. Care has been exercised to ensure that no new subject matter has been introduced into the application.

Claims 1-14 are presently pending in the application. The Examiner has objected to Claims 10 and 13-14 due to informalities, which Applicant has corrected. The Examiner has rejected Claims 1-3, 5 and 10-12 under 35 U.S.C. § 102(b), and claims 6-7 under 35 U.S.C. §103(a). Applicant traverses these rejections. The Examiner has also rejected claims 1-14 under 35 U.S.C. §102(e). Applicant traverses these objections and submits a declaration of the inventor pursuant to 37 C.F.R. § 1.131 to overcome the Examiner's rejection. However, a potential interference count may exist with respect to Claim 7.

I. INFORMALITIES

The Examiner has objected to Claim 10 because it uses the terms "collapsible microwave cooking container" and "collapsible cooking container" interchangeably. In response to the Examiner's objection, Applicant has amended Claims 9-14 for consistent use of the term "collapsible microwave cooking container."

The Examiner also objected to Claims 13-14 due to a typographical error in Claim 13. Applicant has corrected the error per the Examiner's suggestion.

II. CLAIM REJECTIONS UNDER 35 U.S.C. § 102(b)

The Examiner has rejected claims 1-3, 5 and 10-12 as being anticipated under 35 U.S.C. §102(b) by MacLean, IV, U.S. Pat. No. 5,468,939. Application respectfully traverses the Examiner's rejection.

MacLean, IV does not disclose the locking tab and slot structure disclosed in the present Application. MacLean, IV does disclose the generally rectangularly shaped segments described in the present Application. The notches disclosed in MacLean, IV (42, 43), however, are not the same structure as the locking tabs and slots structure of the present Application. In MacLean, IV, there are two locking tabs on each generally rectangularly shaped segment, with a wide notch between each of them. As a result, two notches interact with four locking tabs in order to “lock” the container in its cube configuration. In order for the container to lock properly, the four locking tabs must alternately over- and under-lap each other. The structure disclosed in the present Application is far simpler. There is only a single radiused locking tab on each generally rectangular segment. These two radiused more easily overlap one another, resulting in a much simpler locking mechanism than that disclosed in MacLean, IV. The locking tab slot disclosed in the present application further allows the two locking tabs to more easily slide past one another.

The present Application therefore discloses a different structure for performing the locking function disclosed in MacLean, IV. That structure includes a single radiused locking tab associated with each generally rectangularly shaped segment, and a locking tab slot where the locking tab meets the generally rectangularly shaped segment. The claims are therefore not anticipated by the cited prior art reference.

III. CLAIM REJECTION UNDER 35 U.S.C. § 103(a)

The Examiner has rejected claims 6-7 as being obvious under 35 U.S.C. § 103(a) as being unpatentable over MacLean, IV in view of Roccaforte, U.S. Patent No. 4,584,202. Applicant respectfully traverses the Examiner’s rejection, as there is no suggestion to combine the two references and as Maclean, IV in fact teaches away from Roccaforte, and vice versa.

MacLean, IV acknowledges the use of pouches in making popcorn, but complains that an “expanding bag or pouch...provides relatively nonplanar surfaces which do not readily reflect the microwave radiation within the oven.” MacLean, IV 1:62 – 1:64. The solution proposed in MacLean, IV is to coat the bottom panel and the lower portions of the side panels of the container with the susceptor material. Maclean, IV therefore teaches away from the use of any charge pouch within a collapsible container.

Moreover nothing in Roccaforte suggests the use of a charge pouch in an expandable or collapsible paperboard container. Instead, Roccaforte teaches the use of a charge pouch which itself expands beyond the limits of its container. Notably, an attempt to combine Roccaforte with MacLean results in an attempt to combine a container with locking tabs, (albeit different ones than applicant) with a reference (Roccaforte) that relies upon no locking tabs at all.

Applicant therefore respectfully submits that the claimed invention is not obvious in light of the cited references because one of them teaches away from the combination of the references, and the other does not contain any suggestion to combine the references, such combination serving to frustrate the operable structures of each.

IV. CLAIM REJECTIONS UNDER 35 U.S.C. §102(e)

The Examiner has rejected claims 1-14 under 35 U.S.C. § 102(e) as being anticipated by Langen, U.S. App. No. 2003/0106899. Applicant is the true and prior inventor of the subject matter of the claims filed in its present Application, some of the features of which are also claimed in Langen. Accordingly, an interference should be declared to resolve certain claims. MPEP §2304. To the extent Langen does not claim substantially the same subject matter, Applicant submits the enclosed Declaration under 37 C.F.R. § 1.131.

Langen improperly attempts to claim subjected matter that was actually invented by Applicant. Applicant examined a container substantially identical to that disclosed in the Provisional Application No. 60/339,631, on which Langen relies. After examining the container, Applicant conceived of a number of the improvements (as applied for herein) and reduced them to practice long before the filing date of Langen, including:

- (1) "Heat Tabs" for safe removal of the container from the microwave;
- (2) An improved locking mechanism for the collapsible side panels, consisting of radiused locking tabs and a slots; and
- (3) Developing webbing and gusseting at the four (4) corners of the bottom panel to make the container leak resistant.

The "Heat Tabs" do not appear to be claimed in Langen, though they are disclosed. The webbing and gusseting are disclosed and claimed in Langen, but the claims in Langen are different than the claims in the present application because the "charge pouch" is an integral element of the claims. Thus, in accordance with 37 CFR §1.131, Applicant submits the enclosed Declaration Under 37 CFR §1.131, by the inventor Mark Baker, to address all of Applicant's claims, except for Claim 7. Mr. Baker declares that the invention claimed in the present application was conceived and reduced to practice in the United States well prior to the December 12, 2002 filing date of Langen. Langen is not entitled to the earlier filing date of the provisional application upon it purports to rely. The three above features are not disclosed in the parent provisional application – for good reason. These features were invented by Mark Baker, long before the filing date of the Langen utility application. See Provisional App. Ser. No. 60/339,631.

Simply put, “heat tabs” and “webbing and gusseting” features (Applicant’s Claims 8-14) are not anticipated by Langen because the inventor conceived and reduced to practice the invention well before the effective date of the Langen reference.

Claims 1-7 of the present Application are directed towards the locking mechanism for the side panels of the container. Langen does not claim the subject matter of Claims 1-6, because all of the Langen claims require the presence of a charge pouch, while Claims 1 through 6 of the present application do not. Thus, in accordance with 37 CFR §1.131, Applicant submits the enclosed Declaration Under 37 CFR §1.131, by the inventor Mark Baker. Mr. Baker declares that the invention claimed in the present application was conceived and reduced to practice in the United States prior to the December 12, 2002 filing date of Langen. Langen is not entitled to the earlier filing date of the provisional application upon which it purports to rely. These features are not disclosed in the parent provisional application. See Provisional App. Ser. No. 60/339,631.

Accordingly, Claims 1-6 and 8-14 are not anticipated by Langen because the inventor conceived and reduced to practice the invention before the effective date of the Langen Reference.

However, Claim 7 of the Application appears to claim substantially the same invention as Claims 55 and 56 of Langen. Accordingly, an interference proceeding may be necessary.

V. PROPOSED INTERFERENCE COUNTS

Applicant submits the following proposed interference counts:

Count I: A collapsible microwave cooking container, comprising:

a generally, rectangularly shaped paperboard blank folded along crease lines to form a bottom portion, a first side portion, a top portion, and a second side portion wherein said top

portion and said first side portion are adapted to be attached so as to form a cube having opposed, open sides; and

a first collapsible side and a second collapsible side each adapted to substantially cover one of said opposed, open sides of said cube when said collapsible microwave cooking container is in an expanded configuration;

wherein each of said first collapsible side and said second collapsible side comprise a first generally rectangularly shaped segment laterally extending from said bottom portion and having a first radiused locking tab adjoining said first segment, a second generally rectangularly shaped segment laterally extending from said top portion and having a second radiused locking tab adjoining said second segment, and a locking tab slot disposed at the intersection of at least one of the first and second radiused locking tabs and the corresponding one of the first and second generally rectangularly shaped segments, respectively, such that when said collapsible microwave cooking container is in said expanded configuration, said collapsible microwave container is generally maintained in said expanded configuration as an exterior surface of said first locking tab engages an interior surface of said second generally rectangularly shaped segment and an exterior surface of said second locking tab engages an interior surface of said first generally rectangularly shaped segment and said top portion and one of said first and second generally rectangularly shaped segments is disposed within the locking tab slot formed in the other of said first and second generally rectangularly shaped segments, wherein a charge pouch is attached to the bottom portion and wherein the charge pouch further includes un-popped popcorn.

This Count is the same as Claim 7 of the present Application (written in independent form) and is substantially the same as at least Claims 55 and 56 of Langen. Applicant's

interference claims are timely filed. Langen was published on June 12, 2003. This Application was filed on October 9, 2003. This Application meets the requirements of 35 U.S.C. § 135(b)(2) because it was filed approximately four (4) months after the Langen application was published, well within the one-year time for filing. Applicant respectfully submits that the Application is otherwise in condition for allowance.

Accordingly, Applicant respectfully requests that the Examiner initiate an interference on this Count. In the event that the Examiner does not find that Claim 7 of the present Application is the same as Claims 55 or 56 of Langen, Applicant respectfully submits that the declaration of the inventor submitted pursuant to 37 C.F.R. § 1.131 likewise overcomes the Examiner's rejection.

VI. CONCLUSION

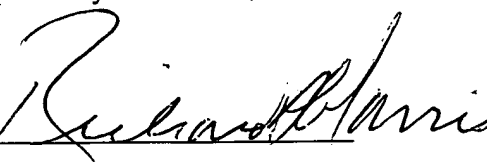
Applicant respectfully submits that the subject application as a whole, including all of claims 1-14, are in *prima facie* condition for allowance, and reconsideration and allowance of same is respectfully requested. While the subject matter of claim 7 is otherwise allowable, again Claim 7 may be subject to an Interference Count in view of Langen.

Should it be determined, however, that a telephone conference would expedite the prosecution of the subject application, the Examiner is respectfully requested to contact the attorney undersigned at (312) 456-8400.

The Commissioner is hereby authorized to charge any fee deficiency or credit overpayment to deposit account number 50-2428 in the name of Greenberg Traurig.

Respectfully Submitted,

Date: November 8, 2004

By: 

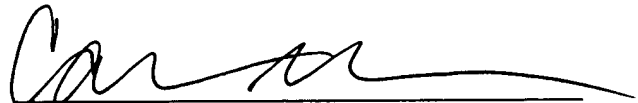
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I hereby certify that this Amendment and Communication is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner for Patents, Alexandria, Virginia 22313-1450.

Dated: 11/8/04


Cameron M. Nelson

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